MALAYAN BANKING BHD.

v.

PENDAFTAR HAKMILIK, NEGERI PAHANG & ANOR.

HIGH COURT MALAYA, KUANTAN
LAMIN MOHD. YUNUS J
[ORIGINATING MOTION NO. 25-15-89]
25 SEPTEMBER 1990

LAND LAW: *Registrar's caveat - Application for removal - Who should apply - Procedure to be followed - Time limitation - Sections 321 and 418 of National Land Code 1965.*

The applicant MBB was the registered chargee of the said land in relation to a loan in favour of the chargor. The chargor defaulted on the loan and decided to sell the property to satisfy the outstanding debt. However, it was discovered that a Registrar's caveat had been registered against the land because of failure of the chargor to pay income tax. MBB's request for removal of the caveat was refused; however the 2nd respondent was prepared to reconsider if the taxes owing were paid up. MBB applied by way of an originating motion for the Registrar to be directed to remove the caveat, alleging that the entry of caveat and the refusal to cancel it were improper in law.

Held:

[1] Pursuant to s. 418 of the National Land Code (NLC), this application should have been commenced by way of an appeal per Raja Azlan Shah LP in *Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Bhd.*

[2] Under s. 321 of the NLC, it is the proprietor who must first apply to the Registrar, for the cancellation of the caveat; if the Registrar refuses to do so, the proprietor who should appeal to the High Court. On the facts of this case, the proprietor (who was the chargor) did not comply with s. 321 of the NLC.

[3] If the chargor, being the aggrieved party wishes to appeal against the Registrar's decision to enter the caveat, the period of 3 months as is provided in s. 418(1) of the NLC should be calculated from January 1989, that is the time when it was discovered that the caveat was registered.

[Applicant's application dismissed.]

[Editor's Note: The applicant has lodged an appeal to the Supreme Court *vide* Civil Appeal No. 01-41-90.]

Case referred to:

Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Berhad [1981] 1 MLJ 234

Legislation referred to:

National Land Code 1965, ss. 320(1), 321(3)(b), 418(1)

For the applicant - Mohamad Ariff b. Md. Yusof; M/s. Cheang & Ariff
For the 1st respondent - Othman b. Abdullah
For the 2nd respondent - Mohamed Bazain bin Idris

JUDGMENT

Lamin Mohd. Yunus J:

The applicant in this case applied for an order by way of an originating motion that the Registrar "be directed to remove the Registrar's Caveat No. 601/88 Jilid 26 Folio 54 registered on that piece of land held under HS (M) 13362 PT No. 947/34. Mukim Kuala Kuantan" (Encl. 1). In the supporting affidavit (Encl. 2) it was deposed that the applicant was the registered chargee of the said land which was charged to secure a loan of RM77,000 from the applicant in favour of the chargor. As the chargor had been in default of the loan, he therefore "on or about January 1989" approached the applicant with the view of disposing of the charged property to a third party by way of a private sale in order to satisfy the debt. However this arrangement could not be finalised as a search at the Land Office Kuantan revealed that a Registrar's caveat had been registered against the charged land on the ground that the chargor had not paid her income tax. The solicitors for the applicant then wrote to the Jabatan Hasil Dalam Negeri Kuantan requesting for the removal of the Registrar's caveat. The Jabatan Hasil Dalam Negeri Kuantan refused to entertain the request. However it was prepared to reconsider it if the applicant could provide a proposal in settlement of the taxes amounting to RM71,520.74 owing by the chargor. The applicant maintained *inter alia* that the entry of the Registrar's caveat and the refusal to cancel it were improper in law.

I dismissed the application with cost on 23 April 1990 on the following grounds. In my view this application should have been before this Court by way of an appeal under s. 418 of the National Land Code. The wording of the said section is clear and unambiguous in that the Legislature has laid down one and only one mode of procedure by which an aggrieved party may obtain redress before the High Court. Subsection (1) of s. 418 states that:

> (1) Any person or body aggrieved by **any decision under this Act** of the State Director, the Registrar or any Land Administrator **may**, at any time within the period of three months beginning with the date on which it was communicated to him, **appeal** therefrom to the High Court.
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> (Emphasis is mine).

The phrase "aggrieved by any decision under this Act of ... **may** ... appeal" must necessarily mean that for any person who is not happy with the decision of any of the three officials namely the State Director, the Registrar or any Land Administrator on **any matter** under the code his only recourse for redress is by way of appeal to the High Court and that he has only **three months** "beginning with the date on which it (the decision) was communicated to him within which to file his appeal. "Raja Azlan Shah, Ag. LP as he then was when delivering the judgment of the Federal Court in the case of *Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Berhad* [1981] 1 MLJ 234 at 237 said:

> If the relevant authority commits an error in the interpretation of the section then an aggrieved party has a right of appeal to the High Court under s. 418 of this Code. Parliament has on the good ground of public policy found that, that is a just and necessary right. In this same section Parliament has also enacted a special procedure of enforcing that right ...
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> Reading s. 418 of the Code, we are satisfied that the latter is the correct interpretation. Having regard to the special provision for limiting the time within which to enforce the right, the indications are that Parliament has by using plain and unambiguous language intended the right to be exclusive of any other mode of enforcing it. The time-limit is the foundation of the right given in the section. It is in the highest degree improbable that the period of three months as a limitation would have been inserted if an indefinite period were intended to be given. The

period of three months is obviously for the purpose of preventing stale claims. If the contrary is sustainable, then the respondents are allowed to seek to enforce their statutory right by a method other than that prescribed by the code creating it.

As the present case relates to a Registrar's caveat and that under the code it is the Registrar who has to decide whether to register a caveat in any particular case as it "appears to him to be necessary or desirable" for any of the purposes as stipulated under s. 320(1) of the Code, and if any party is aggrieved by the Registrar's decision then it must be his decision that has to be examined or questioned. If his decision to enter a Registrar's caveat is not questioned then the caveat continues in force until it is cancelled by him. Subsection (3) of s. 321 of the Code provides that a Registrar's caveat continues in force until it is cancelled by him either:

(a) of his own motion; or

(b) on an application in that behalf by the proprietor of the land affected; or

(c) pursuant to any order of the Court made on an appeal under s. 418 **against his decision to enter the caveat, or his refusal of any application for its cancellation under para. (b).**

As the purpose of the present application is to have the Registrar's caveat cancelled then it is the proprietor of the land (and in our case it must be the chargor) who must first apply to the Registrar to have the Registrar's caveat cancelled as required under subsection (3)(b) of s. 321. If the Registrar refuses to cancel it then the proprietor of the land being the aggrieved party (and not the chargee who is the applicant in our case) may take the matter up on appeal to the High Court. In the event of the appeal being allowed in the terms that the High Court will make the order directing the Registrar to cancel the caveat only then will the Registrar be moved to effect the cancellation (s. 321(3)(c)). In the present case, firstly there is no evidence that the proprietor of the land has applied to the Registrar for the cancellation of the caveat and secondly there is no evidence of the decision of the Registrar's refusing to cancel it as to constitute a ground for an appeal by the owner of the land under s. 418 of the Code. It is not the decision of the Department of Inland Revenue that must be challenged for refusing to entertain the request to cancel the caveat. Its decision may only serve as a ground for the Registrar's refusal to cancel it. Of course there has been no appeal and in the circumstances I therefore dismissed the application for failure to comply with the expressed provisions of the code and that the applicant is not the proper party to come to this Court for redress in regard to the matter before me.

Finally, I wish to mention in passing one minor point which relates to the application of s. 418(1) and it pertains to the period during which an appeal may be lodged. In the light of the above, this question is of little or of no consequence at all. However if I may observe that the Department of Inland Revenue made a request for an entry of a Registrar's caveat on the said land on 1 September 1988 (Encl. 5A para. 6). The caveat was registered on the same day (Encl. 7A para. 3). About the month of January 1989, the chargor approached the applicant with a view to disposing of the charged property to a third person by way of a private sale but it could not be done as a search in the Kuantan Land Office revealed that there was already a Registrar's caveat registered. We are not told when the search was made and I am sure this information is available. Anyway it is not before us for reasons best known to the applicant. However, if the chargor, being the aggrieved party, wishes to appeal against the decision of the Registrar to enter the caveat, I think it is only reasonable for the

period of three months to be calculated from January 1989. If the present application were to be treated as an appeal under s. 418 of the Code and the date of filing being 27 October 1989, then the aggrieved party was clearly out of time.

The other issues such as priority of interest whether the Registrar's caveat was properly entered in law and whether the Department of Inland Revenue could have caveatable interest so as to permit the entry of the Registrar's caveat under the code are of no relevance for consideration here.

Also found at [1990] 2 CLJ 999